

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:07cv157-1-C

3:05cr311-C

STACEY JOAN BOGAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER comes before the Court upon Petitioner's Motion for Certificate of Appealability (Doc. No. 5), filed August 4, 2010.

On April 4, 2007, Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. (Doc. No. 1). On May 7, 2007, after conducting an initial review of Petitioner's Motion, this Court dismissed Petitioner's Motion to Vacate. (Doc. No. 3).

Petitioner has now, over three years later, filed the instant Motion for Certificate of Appealability. She relies on a decision of the Eleventh Circuit, United States v. Bonilla, 579 F.3d 1233 (11th Cir. 2009), in arguing that she was unconstitutionally convicted of both identity theft and aggravated identity theft. Petitioner's case is easily distinguished from Bonilla because the conduct for the identity theft conviction occurred between 2003 and 2004, while the conduct for the aggravated identity theft conviction occurred in 2005.¹ (Case No. 3:04cr233: Doc. No. 1 Information; Case No. 3:05cr311: Doc. No. 1: Information).

¹ In contrast, the conduct was the same for both convictions in Bonilla. 579 F.3d at 1244.

Thus, pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, the Court declines, after reviewing the record, to issue a certificate of appealability as jurists of reason would not find it debatable that the petition states a valid claim of the denial of a constitutional right and that the district court was incorrect in its procedural rulings. 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion for Certificate of Appealability (Doc. No. 5) is **DENIED**.

Signed: August 20, 2010

A handwritten signature in black ink, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

